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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Genaro Lopez Arias,

10 Petitioner,

11 v.

12 David C Shinn, et al.,

13 Respondents.
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No. CV-21-01570-PHX-GMS

**ORDER
and
DENIAL OF CERTIFICATE OF
APPEALABILITY AND IN FORMA
PAUPERIS STATUS**

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16 Pending before the Court is the Report and Recommendation (“R&R”) of
17 Magistrate Judge Michelle H. Burns (Doc. 21) regarding petitioner’s Petition for Writ of
18 Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and supplement (Docs. 1, 2). The R&R
19 recommends that the Petition be denied and dismissed with prejudice. The Magistrate
20 Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R
21 at 16 (citing 28 U.S.C. § 636(b)(1). Petitioner filed objections on April 26, 2022 (Doc.22).
22 Respondent filed a Reply to Petitioner’s Objections on May 10, 2022 (Doc. 23) and
23 Petitioner filed a “SurReply” to Respondent’s Reply on May 17, 2022 (Doc. 24) and a
24 Request for Judicial Notice filed on January 10, 2023 (Doc. 25).

25 Respondents’ Reply to Petitioner’s Objection to Report and Recommendation (Doc.
26 23) raises the issue that the Report and Recommendation does not address Respondents’
27 assertion that Petitioner’s Petition was untimely by 70 days. (Doc. 18 at 5-9).
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Petitioner's "SurReply" to Respondent's Reply to Petitioner's Objection to Report and Recommendation (Doc.24) requests that Respondents' Reply be stricken from the record in its entirety for failure to object to the Report and Recommendation.

The Court has considered the above filings and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). Further, this Court retains the discretion to consider the timeliness of Arias' petition, notwithstanding Respondents' failure to object to the R&R. *See Day v. McDonough*, 547 U.S. 198, 209–11 (2006).

The Court agrees with the Magistrate Judge's determinations, accepts the recommended decision within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner's objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate").

IT IS THEREFORE ORDERED that Report and Recommendation of the Magistrate Judge (Doc. 21) is accepted.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying and dismissing Petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

IT IS FURTHER ORDERED any request for a certificate of appealability and leave to proceed in forma pauperis on appeal be denied because Petitioner has not made a substantial showing of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 132 S. Ct. 641, 648 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Dated this 6th day of February, 2023.


G. Murray Snow
Chief United States District Judge